

December 26, 2006

Michigan Supreme Court  
Mr. Corbin R. Davis  
Clerk of the Supreme Court  
PO Box 30052  
Lansing, MI 48909

Re: Proposed New Rule 19  
ADM 2005-41

Dear Mr. Davis,

The undersigned writes on behalf of my client the Michigan Press Association. The Michigan Press Association is a trade association of some 300 daily and weekly newspapers. These members publish within the state of Michigan and by definition of the MPA by-laws are qualified under applicable statutes to publish legal notices for courts and Michigan government.

The Michigan Press Association is dedicated to supporting public access to the operations and affairs of government. The purpose of the following comments is, therefore, to be constructive. They are submitted with the following goals in mind.

Proposed Rule 19 would seal off access to the records of the State Bar of Michigan listed in the proposed rule from the public in their entirety. The list includes records relating to the Ethics Committee and Ethics Hotline programs, Practice Management Resource Center program, Unauthorized Practice of Law program, Client Protection Fund program and Lawyers and Judges Assistance program. Although staff comments indicate that this would simply codify current policy, currently the documents would be subject to a court of law in a civil case. Under this rule they are only subject to subpoena in a criminal case and to government investigations into related activity.

Although the documents in question with regard to the lawyers and judges assistance program are sensitive, there needs to be some mechanism for the public to see these documents in appropriate circumstances.

For example, when the lawyer is a public servant paid with taxpayer dollars, the public has an interest in his or her fitness for the profession. There are circumstances when

that information should be available even for non-public servant members of the state bar.

Freedom of expression is meaningless if the information needed to formulate an opinion is kept from us.

Thomas Jefferson said,

"The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them." --Thomas Jefferson to Edward Carrington, 1787. ME 6:57

The proposed rule seals off additional valuable information from the public

In order to utilize our right of free speech, we must be privy to the facts so that the speech is accurate and formulated on the truth, not on rumor. We must shine the light of access upon the files of government so that scurrilous opinions of government actions can be exposed.

The attempt to seal off from public scrutiny investigations by the State Bar of Michigan into allegations of misconduct by Judges, Prosecutors and other publicly paid members of the bar should be anathema to anyone who believes in democracy and the public's right of free speech. These files may contain important information on how public servants perform their positions of trust. Public trust in the legal profession is essential to the functioning of a civilized society.

To seal off records of ethical violations under all circumstances except those involving criminal prosecution and government investigation goes too far. This will not only deprive the public of critical information about lawyers whom they look to for advice on their legal matters but will erode public confidence in the profession.

To seal off records of judicial ethical breaches or abuse of drugs and alcohol is likewise not in the best interest of the public. The public is entitled to know that the State Bar is doing its job of policing its members. That role of the State Bar is a difficult one, but it is necessary and should be performed in a manner to assure the public that it holds its member to the highest ethical standards.

We urge you to refrain from adopting Rule 19. In the alternative we urge you to allow the subpoena of this information in civil suits and to allow disclosure by the State Bar

The Supreme Court Clerk  
December 26, 2006

when the public interest in disclosure outweighs the public interest in non-disclosure in the particular instance.

Thank you for your consideration.

Very truly yours,

Dawn L. Hertz

BUTZEL LONG